

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: October 26, 2000
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Timothy E. Johns called the meeting of the Commission on Water Resource Management to order at 9:24 a.m.

The following were in attendance:

MEMBERS: Mr. Timothy Johns, Dr. Bruce Anderson, Mr. Robert Giraldo, Mr. Brian Nishida, Mr. Herbert Richards, Jr.

STAFF: Ms. Linnel Nishioka, Mr. Roy Hardy, Mr. Ed Sakoda, Mr. Eric Hirano, Mr. Dean Nakano, Mr. Glenn Bauer, Mr. Dean Uyeno, Mr. David Higa, Ms. Lenore Nakama, Mr. Charley Ice

EXCUSED: Mr. David Nobriga

COUNSEL: Linden Joesting

OTHERS: Sean Hiraoka, Manabu Tagomori, George Hiu, Rosemary Liu, Karen Piltz, Mike Robertson, Ian Smith, Ben Kudo, David Craddick, Jim Anthony, Dudley Kubo, Doug Toews, Kala Hae, Paul Achitoff, Roy Sakamoto, Catharine Kong, John Muraoka, Chris Yamasaki, Carl Brown, Doug Vincent, George Hudes, John Reppun, Charles Reppun, Guy Nakamoto

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

1. Minutes of the August 23, 2000 meetings

Deputy Director Linnel Nishioka stated that the Commission received a letter from Earthjustice stating that certain comments be added to the minutes. Staff has no objections to the added comments which were made by Marjorie Ziegler at the meeting in Honokaa.

MOTION: (RICHARDS/NISHIDA)
To approve the minutes as amended.
UNANIMOUSLY APPROVED AS AMENDED.

1. **Old Business/Announcements by Deputy Director Linnel Nishioka**

The next 2 upcoming meetings of the Commission are on November 29 and December 20.

The funds for the Drought Coordinator have been met and is scheduled to start this year.
The funds were obtained from County and State agencies.

1. **Minutes of the August 22 Field Trip**

In the second paragraph, where Lalakea Falls is mentioned it should be changed to Hakalaoa Falls.

MOTION: (GIRALD/NISHIDA)

To approve the minutes as amended.

UNANIMOUSLY APPROVED AS AMENDED.

9. **West Kuiaha Associates LLC Application For Well Permit, West Kuiaha Well #2 (Well No. 5518-05), Well Construction: 12 inches, Casing Diameter: 750 feet Deep Well, Pump Installation: 800 gpm for Domestic use, TMK 2-7-8:21, West Kuiaha, Pauwela, Makawao, Maui**

PRESENTATION OF SUBMITTAL: Mr. Charley Ice

AMENDED RECOMMENDATIONS:

That the Commission:

- A. Approve the issuance of a well construction permit for West Kuiaha Well #2 (Well No. 5518-05), subject to the standard conditions in Exhibit 5, and the following special conditions:
 - 1. The well should not be used for drinking water unless it is properly tested and treated.
 - 2. If potable water is used to supply both domestic and irrigation purposes in a single system, the permittee shall eliminate cross-connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water.
 - 3. The well depth shall be limited to no deeper than -71 feet, msl.

4. Kuiaha-Smith Well (Well No. 5518-04) shall be used as an observation well during the pump testing of this well, and Commission staff shall be given sufficient advance notice to be present before and during the testing.
5. Applicant shall construct the well in accordance with County standards since it may be dedicated to the County and it should meet the Safe Drinking Water Standards.

TESTIMONY:

David Craddick of Maui Department of Water Supply (DWS) requested that the Commission seriously reconsider issuing this permit and does not agree to staff's submittal. He stated that the wells should be moved to the side so that they do not affect other wells in the area. There will also be a lot of consumers that will be dependent on this source of water. The DWS is concerned about well failure.

Chairperson Johns asked for a motion to move into executive session to consult with counsel on the court order and the impact of the water code applications with regard to the impact to adjacent water well and permits that were issued previously.

MOTION: (GIRALD/NISHIDA)

At 10:05 am the Commission went into Executive Session.

The meeting was resumed at 10:35 am.

TESTIMONY BY APPLICANT:

Ian Smith of Smith Development stated that staff's report is consistent with their proposal. He stated that they are aware of the permitting process as far as pump testing, and completion reports, as well as the requirements of the Safe Drinking Water Branch, to eventually utilize the well as a potable source. Their company has no objections to meeting County standards. He also stated that these wells are only a backup source for the 14 lots that will be served. If this well is drilled and put on line, its current use will be as an additional source to the existing well that is on the property for the 14-lot agricultural subdivision.

OTHER TESTIMONIES:

Dr. James Anthony requested that the Commission, in the interest of the public, hold the developer liable and perhaps require bonding of the driller in that these wells are not abandoned at any time. He also requested that the Commission consider a broader perspective of this application as it may pertain to other areas of the State.

Dr. Anderson considered Dr. Anthony's testimony in that if the operator of the well leaves, the systems will be left unmanaged. He felt that this is a significant concern and one that is legitimate. He also stated for the record that the standard conditions in the applications with reference to no. 4 does not need to be restated. That is a standard condition that would apply to this well and any others.

MOTION: (ANDERSON/NISHIDA)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

10. **Waiahole-Waikane Community Association, Hakipu'u Ohana, Ka Lahui Hawaii, Kahalu'u Neighborhood Board No. 29, and Makawai Stream Restoration Alliance Petition for Declaratory Order Denying Bishop Estate's Water Use Permit Application for Failing to Comply with the Commission on Water Resource Management's Final Decision and Order in the Waiahole Ditch Combined Contested Case Hearing (DEC-OA00-G6)**

Kamehameha Schools Application for a Water Use Permit (WUP No. 474) Waiahole Ditch System Existing/Future Irrigation and Dust Control Use for 4.2 mgd, Koolaupoko, Kahana, and Waipahu-Waiawa Ground Water Management Areas, Oahu

Chairperson Johns announced that he is recusing himself of item no. 10 in light of certain language in the Waiahole decision. In the absence of Commissioner Nobriga and also Commissioner Nishida's recusal, this item was withdrawn from the agenda.

Deputy Attorney General Linden Joesting clarified that without a quorum, the Commission would not be able to take up the matter or to receive any testimony.

4. **Waipio Taro Farmers Association, Application for a Stream Channel Alteration Permit (SCAP-HA-310), Channel Excavation to Restore Streamflow Capacity, Wailoa River, Waipio Valley, Hamakua, Hawaii (TMK 4-9-10:37, 38, 54)**

PRESENTATION OF SUBMITTAL: Mr. Edwin Sakoda

RECOMMENDATIONS:

That the Commission approve a stream channel alteration permit for the excavation of about 5000 cubic yards of gravel/cobble and emergent vegetation from a reach of Wailoa Stream, Waipio Valley, Hawaii, subject to the Commission's standard conditions in Exhibit 9 and the following special condition:

"The applicant shall prepare a Best Management Practice Plan (BMPP) to minimize water pollution during construction activities. The BMPP shall be acceptable to the Department of Health and the applicant shall follow the Best Management Practices during the excavation of the gravel bars."

TESTIMONY:

Dudley Kubo and Doug Toews of Natural Resources Conservation Service both concur with staff's assessment.

MOTION: (RICHARDS/GIRALD)

To approve the submittal.

UNANIMOUSLY APPROVED.

3. **Department of Transportation, Application for a Stream Channel Alteration Permit (SCAP-HA-270) Mamalahoa Highway Drainage Improvements at two locations: Paauau Stream (TMK 9-6-02: 47; 9-6-02 por of Kamani St.; 9-6-05:por 46) Unnamed Stream (TMK (3) 9-6-12:04, 9-6-13:02) and 9-6-12: por 12; 9-6-13:05) Island of Hawaii**

PRESENTATION OF SUBMITTAL: Mr. Edwin Sakoda

RECOMMENDATIONS:

That the Commission approve a stream channel alteration permit for drainage modifications on Mamalahoa Highway at Paauau Stream Bridge and at an unnamed stream in the vicinity of Pahala, Hawaii. The permit shall be valid for two (2) years subject to our Standard Stream Channel Alteration Permit Conditions in Exhibit 5.

TESTIMONY:

Sean Hiraoka and Roy Sakamoto of the Department of Transportation concurred with staff's submittal.

MOTION: (RICHARDS/NISHIDA)

To approve the submittal.

UNANIMOUSLY APPROVED.

5. **City & County of Honolulu, Board of Water Supply, Application for a Stream Channel Alteration Permit (SCAP-OA-307), 24-inch Water Main Replacement, Ulehawa Stream, Oahu (TMK 8-7-33:1)**

PRESENTATION OF SUBMITTAL: Mr. Edwin Sakoda

RECOMMENDATIONS:

That the Commission approve a stream channel alteration permit (SCAP-OA-307) to the BWS for a water-line crossing at Ulehawa Stream (TMK 8-7-33:1) Maili, Oahu. The permit shall be valid for two (2) years subject to our Standard Stream Channel Alteration Permit Conditions in Exhibit 3.

TESTIMONY:

Catharine Kong representing the Board of Water Supply and consultant John Muraoka from Fukunaga and Associates concurred with staff's submittal.

MOTION: (GIRALD/RICHARDS)

To approve the submittal.

UNANIMOUSLY APPROVED.

6. Department of Transportation, Application for a Stream Channel Alteration Permit (SCAP-OA-316), Bridge Modifications, Halawa Stream, Honolulu, Oahu, (TMK 9-9-02 and 9-9-03)

PRESENTATION OF SUBMITTAL: Mr. Edwin Sakoda

RECOMMENDATIONS:

That the Commission approve a stream channel alteration permit for the reconstruction of the Honolulu-bound bridge at Halawa Stream, Honolulu, Oahu (TMK: 9-9-02, 9-9-03) subject to our standard conditions for stream channel alteration permits in Exhibit 5.

TESTIMONY:

Carl Brown of Earth Tech representing the Department of Transportation and Chris Yamasaki, Project Manager, both concurred with staff's submittal.

MOTION: (GIRALD/NISHIDA)

To approve the submittal.

UNANIMOUSLY APPROVED.

7. Kenneth Simon, Applications for Water Use Permits, Pearl City Wells (Well Nos. 2358-35,36,46) TMK 9-6-3:8, WUP No. 573 Existing (Agriculture) Use for 0.156 mgd, Pearl City Well (Well No. 2358-44) TMK 9-6-3:8, WUP No. 574 Existing (Domestic) Use for 0.007 mgd, Waipahu-Waiawa Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Ms. Lenore Nakama

AMENDED RECOMMENDATIONS:

1. ~~Staff recommends that~~ The Commission defer action on these water use permit applications pending a legal opinion from the Department of the Attorney General on the impacts of the Supreme Court's decision in the Waiahole Contested Case on these applications, provided that the current ~~domestic and~~ agricultural use may be continued up to 10,000 gpd for 90 days until this application is brought back to the Commission.

MOTION: (RICHARDS/NISHIDA)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

8. University of Hawaii, Department of Animal Sciences Application for a Water Use Permit (WUP No. 528) Waialeale Well (Well No. 4101-10), TMK 5-8-01:7, New Agriculture (Dairy and Piggery) Use for 0.026 mgd, Kawaioloa Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Ms. Lenore Nakama

RECOMMENDATIONS:

Staff recommends that the Commission approve the issuance of a water use permit (WUP No. 528) to the University of Hawaii, Department of Animal Sciences for the reasonable and beneficial use of 26,400 gallons per day of brackish water for agricultural (dairy & piggery) use from the Waialeale Well (Well No. 4101-10), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.
2. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

TESTIMONY BY APPLICANT:

Mr. Douglas Vincent, Chairman of the Dept. of Animal Sciences at the University of Hawaii apologized for the lack of diligence and concurred with staff's submittal.

MOTION: (RICHARDS/NISHIDA)

To approve the submittal.

UNANIMOUSLY APPROVED.

11. Authorization to Conduct Statewide Public Hearings on the Draft Update of the State Water Projects Plan

PRESENTATION OF SUBMITTAL: Mr. Dean Nakano

AMENDED RECOMMENDATIONS:

1. That the Commission authorize staff to initiate and complete the public hearing process required for adoption of the draft update of the State Water Projects Plan (SWPP); and
2. that the Commission acknowledge and reference the August 22, 2000 Supreme Court decision on Waiahole Ditch Decision and Order within the draft of the SWPP report.

TESTIMONIES:

Dr. James Anthony stated that he wants to make sure that the Supreme Court's decision be referenced within the SWPP before going to the public. He stated that the August 22, 2000 Supreme Court decision on Waiahole should have been addressed in staff's submittal. He also stated that the privatization issue was not clarified. He did not concur with staff's submittal.

Mr. Guy Nakamoto of Waiahole stated that the Board of Water Supply has been overpumping since 1974. He stated that before going to public hearing, the staff should take inventory of the water first.

Chairperson Johns agreed with Dr. Anthony's statement that there should be some discussion of the impact of Waiahole. He is not certain how it should be integrated at this point, but the Waiahole decision should be recognized and acknowledged as part of the SWPP when going out to public hearing. The process should not be stopped, but we do need public input on the draft plan.

MOTION: (GIRALD/RICHARDS)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

Since there was no Other Business, the Commission meeting was adjourned at 11:30 am. The Commission then went into Executive Session to approve the minutes of the Executive Sessions from June 21, 2000 and August 23, 2000.

Respectfully submitted,

FAITH F. CHING
Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA
Deputy Director